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# Torture and Ill-Treatment Under Perceived: Human Rights Documentation and the Poor

*Steffen Jensen,\* Tobias Kelly,\*\* Morten Koch Andersen,\*\*\*  
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### ABSTRACT

This article addresses the question of how human rights practitioners know about harm. In particular, what forms of torture and ill-treatment are made legible through human rights documentation? We argue human rights docu-

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mentation techniques can systematically under perceive the extent of torture and ill-treatment among people living in poverty. The article is based on research in Kenya, Bangladesh, and Nepal, and sets out five key predispositions in documentation techniques that result in implicit discrimination.

## I. INTRODUCTION

Torture has been one of the dominant international human rights issues of the early twenty-first century. Inevitably, human rights practitioners have only been able to document the experiences of a small minority of survivors. However, we argue the experiences of people living in poverty have disproportionately and systematically failed to enter the world of human rights documentation.

Documentation acts as the eyes and ears of the human rights movement. The techniques and assumptions of documentation help set the parameters for how human rights organizations and practitioners perceive and act in the world. This article, therefore addresses the question of how human rights documentation seeks to know and respond to harm and injustice.<sup>1</sup> It asks, what types of injury, what type of victims, and what type of perpetrators are made legible through attempts to document torture and ill-treatment? Furthermore, how does this restrict the range of the people in whose names human rights organizations can act, the violations they can respond to, and the justice projects they can pursue?

Documentation is always a challenge, and the documentation of torture and ill-treatment particularly so. Torture can be deliberately inflicted in ways that leave few visible traces—leaving behind little that can be straight forwardly documented with a high level of evidential probity.<sup>2</sup> Survivors can also be too traumatized or scared to give the detailed or consistent accounts of their experiences, which documentation can demand.<sup>3</sup> There are obstacles to documenting torture and ill-treatment though that lie, not in the experiences of survivors, but in the assumptions, structures, and institutional capacities of human rights organizations themselves. In his now classic text, “Rural Poverty Unperceived,” Robert Chambers identified a number of ob-

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1. See STANLEY COHEN, *STATES OF DENIAL: KNOWING ABOUT ATROCITIES AND SUFFERING* (2001); VEENA DAS, *CRITICAL EVENTS: AN ANTHROPOLOGICAL PERSPECTIVE ON CONTEMPORARY INDIA* 206–07 (1995); SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO SOCIAL JUSTICE* (2006); Kirsten Hastrup, *Violence, Suffering and Human Rights: Anthropological Reflection*, 3 *ANTHROPOLOGICAL THEORY* 309 (2003); Claire Moon, *What One Sees and How One Files Knowing: Human Rights Reporting, Representation and Action*, 46 *Soc.* 876; ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND THE UNMAKING OF THE WORLD* (1985).
  2. See DARIUS REJALI, *TORTURE AND DEMOCRACY* (2007).
  3. See TOBIAS KELLY, *THIS SIDE OF SILENCE: HUMAN RIGHTS, TORTURE, AND THE RECOGNITION OF CRUELTY* (2012).

stacles that prevent development practitioners from “seeing” rural poverty.<sup>4</sup> For Chambers, these obstacles are conceptual, professional, geographical, and social. Similar processes take place within the world of human rights. Paraphrasing Chambers, the central argument of this article is that domestic and international human rights organizations face obstacles in perceiving the form and extent of torture and ill-treatment among the poor. These obstacles originate in both the form of torture and ill-treatment, and the condition of those who are not themselves among the poor and do or, most significantly, do not perceive torture and ill-treatment amongst the poor.<sup>5</sup>

The poor here are understood as being individuals and households marked not only by a lack of income, but also a lack of opportunities in key areas of education, health, and democratic processes, to the extent that they cannot fulfill social demands and customs.<sup>6</sup> Poverty is intersectional and multidimensional, the product of vulnerabilities linked to class, gender, ethnicity, and sexuality amongst others.<sup>7</sup> It is, therefore, important not to think about the poor as a unified group. Nevertheless, the vulnerability of such people to the threat of torture and ill-treatment is over determined. For example, informal housing and livelihood strategies, such as street hawking or sex work, mean that they can be on the margins of legality. The result is that poverty is not only a problem in relation to social and economic rights, but is also deeply linked to violations of civil and political rights as well.

The class based assumptions of human rights regimes have long been noticed.<sup>8</sup> The traditional dominance of civil and political rights has also often meant that many human rights organizations can be reluctant to directly address issues of poverty. However, the point here is not simply that a focus on civil and political rights ignores the gross injustices of poverty. Rather the point is that, even within the limited definitions of torture and ill-treatment adopted by the international human rights system, the day-to-day practices of human rights documentation can exclude people living in poverty.

The international human rights movement has had many notable achievements in the struggle against torture and ill-treatment. The last four decades has seen the creation of regional and international conventions, ever more detailed definitions of torture, and the establishment of clear legal respon-

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4. Robert Chambers, *Rural Poverty Unperceived: Problems and Remedies*, 9 WORLD DEV. 1 (1981).

5. With apologies to Chambers. *Id.* at 1.

6. Amartya Sen, *The Standard of Living, Lecture II, Lives and Capabilities*, in THE STANDARD OF LIVING: THE TANNER LECTURES ON HUMAN VALUES 20 (Geoffrey Hawthorn ed., 1987), available at [http://tannerlectures.utah.edu/\\_documents/a-to-z/s/sen86.pdf](http://tannerlectures.utah.edu/_documents/a-to-z/s/sen86.pdf).

7. Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Colour*, 43 STAN. L. REV. 1241 (1991); Julie Anne White, *The Hollow and the Ghetto: Space, Race, and the Politics of Poverty*, 3 POL. & GENDER 271 (2007).

8. Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 TRANSNAT'L L. & CONTEMP. PROBS. 125 (1998); COSTAS DOUZINAS, HUMAN RIGHTS AND EMPIRE (2007).

sibilities for states to prosecute perpetrators and assist in the rehabilitation of survivors.<sup>9</sup> The result is an unparalleled set of international human rights mechanisms and techniques that define and delimit practices for the collection of information about torture and ill-treatment on a global scale.

However, there remain a number of key blind spots in the ways in which human rights organizations document torture and ill-treatment. This article outlines how the assumptions and institutional capacities of human rights organizations can result in at least five linked conceptual and institutional predispositions. First, torture is treated as an “extraordinary” event, fundamentally different from more mundane and everyday encounters with public officials. This can leave to one side the “mundane” and “everyday” nature of much of the torture and ill-treatment experienced by impoverished populations. Second, limitations in institutional capacities mean that the organizations that carry out the documentation of torture and ill-treatment are often geographically and socially distant from low-income neighborhoods. This means that human rights organizations can find it hard to reach the poorest survivors. Third, documentation focuses on places of detention rather than the “street,” missing other forms of violence that mark the interaction between people living in poverty and public officials. Fourth, there is a predisposition towards prosecution and reparations, where it is often assumed the goal of documentation is legal accountability. Yet, in everyday practice, if not in aspiration, many people living in poverty can prioritize protection above accountability. There is, therefore, a danger that survivors who do not seek legal accountability will be missed. Fifth, torture survivors are easiest to document if they fit into a series of basic assumptions about what it means to be a “good victim.” Widespread prejudices against the livelihood strategies of the poor can mean they do not often meet such expectations about “good victimhood.” These five predispositions can be present in the documentation of torture and ill-treatment amongst all populations. However, it is their interlocking combination that results in particularly acute forms of under-perception when it comes to the experience of the poor.

Several caveats are necessary at this stage. First, the arguments presented below are based on research on documentation in three low-income urban neighborhoods in Kenya, Nepal, and Bangladesh. However, they are potentially applicable to other poor communities, where access to human rights organizations can be equally, if not more limited. Second, the predispositions identified are not present in the same intensity at all times and in all places. Locally specific histories of human rights work can result in different assumptions and priorities—as well as attempts to combat these predispositions.

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9. Malcom D. Evans, *Getting to Grips with Torture*, 51 INT’L COMP. L. Q. 365 (2002); Manfred Nowak, *What Practices Constitute Torture?: US and UN Standards*, 28 HUM. RTS. Q. 809 (2006).

This article addresses general tendencies. Crucially, these tendencies become increasingly intense as you move from the “street”, to national human rights organizations, and on to regional and international mechanisms. Third, at an individual level many human rights practitioners are also both implicitly and explicitly aware of the gaps outlined in this article. This article focuses on institutional forms of knowledge: the techniques, procedures, and forms of information that allow organizations to act, to set priorities, to respond to demands, and to engage with other organizations. That is why we have replaced Chambers’ original “unperceived” for “under perceived.”

One further, and very important point needs to be made. We are not arguing for a formal redefinition of torture and ill-treatment—that is an argument for another place. All of the forms of “everyday” violence we are describing can be said to fit within the definition of torture and ill-treatment as set out in the UN Convention Against Torture.<sup>10</sup> While this way of interpreting torture and ill-treatment might contrast with the more conservative jurisprudence, we believe it still aligns with the ways in which torture and ill-treatment is defined by many human rights organizations in practice. As such, we are not calling for new definitions, but for existing definitions to be more fully applied in a greater range of places.

The article is divided into four further parts. The next section sets out the research methods upon which the paper is based. We then address the political, economic, and legal context within which documentation takes place in the three case studies. The penultimate and longest section discusses the five predispositions. We conclude with some practical implications of our argument.

## II. METHODS

This article is based on comparative research on the documentation of torture and ill-treatment in Kenya, Nepal, and Bangladesh. These three countries were chosen because all three countries have been characterized by relative and absolute poverty, historically high levels of state led violence, and active human rights communities.

The research consisted of two stages. The first stage focused on exploring the techniques and assumptions used by human rights organizations in the documentation of torture and ill-treatment. This meant mapping those organizations involved in documentation. Interviews were then carried out

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10. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* 10 Dec. 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., art. 1, U.N. Doc. A/39/51 (1985), 1465 U.N.T.S. 85 (*entered into force* 26 June 1987) [hereinafter CAT].

with key actors in these organizations, focusing on how they identified survivors, the procedures they used for documentation, and the purposes to which documentation was put. Eighty interviews were carried out in total. These interviews were complemented by the analysis of between ten and fifteen cases in each country, focusing on attempts to document the experiences of torture survivors.

The second stage of the research involved a victimization survey in low-income neighborhoods in Nairobi, Kathmandu, and Dhaka. We carried out three household surveys using multi-stage sampling methods.<sup>11</sup> In each survey we conducted between 500 and 900 interviews, depending on the specific context of each case study. The surveys covered exposure to torture and ill-treatment, perceptions of risk of torture and ill-treatment, and justice seeking behavior. These quantitative surveys were then followed up by extended qualitative interviews of around twenty to thirty respondents in each case study in order to explore specific cases in more detail, as well as the wider meanings and implications associated with incidents of torture and ill-treatment. The combination of these research techniques allows us to produce different perspectives on experiences of torture and ill-treatment, and triangulate against the information produced through human rights documentation.

It is important to acknowledge the limitations of the survey and interview based research. As human rights documentation has its blind spots, so too does social science work. One key limitation of the survey, for example, was excluding questions about domestic and sexual violence. These questions would have raised multiple ethical and methodological issues, above and beyond those already raised by the surveys. There are, therefore, forms of torture and ill-treatment that are inevitably under perceived by the research. The point though is not to say that social science research produces a more complete picture. Rather, it is to hold human rights documentation and social science research up alongside each other, to reflect on what they reveal about one another, and to be transparent about what is left out.

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11. JEEVAN R. SHARMA, BANDITA SIJAPATI, JEEVAN BANIYA, ANISH BHANDARI, DINESH PATHAK, ASHIN BHATTARAI, TOBIAS KELLY & STEFFEN JENSEN, *TORTURE AND ILL-TREATMENT: PERCEPTIONS, EXPERIENCES AND JUSTICE-SEEKING IN KATHMANDU'S SQUATTER COMMUNITIES* (2016), available at <http://soscbaha.org/book/fbook/extract/101>; Zahid ul Arefin Choudhury, Fahima Durrat, Maria Hussain, Mohammad Shaheenur Alam, Morten Koch Andersen, *Slum, Poverty and Violent Conflict in Korail Bosti, Dhaka* (2016), available at <https://torturedocumentationproject.wordpress.com/publications/>; Peter Kiama, Catrine Christiansen, Steffen Jensen, Tobias Kelly, *Violence Amongst the Urban Poor in Nairobi* (2016), available at <https://torturedocumentation-project.wordpress.com/publications/>.



### III. POLITICAL, ECONOMIC, AND LEGAL CONTEXTS

This section presents a brief analysis of the broader contexts within which human rights documentation takes place. Documentation is never carried out in vacuum, or in an ideal and universal form. Rather, the aims, methods, and assumptions are shaped by specific histories. Kenya has a vibrant and relatively free human rights community, which confronts large-scale abuses linked to the wars on crime and security. Bangladesh has a much smaller human rights community, whose make up largely mirrors the country's own political divisions. Nepal has a large human rights community whose working patterns and relationships were established in the transitional aftermath of the Maoist insurgency.

Kenyan politics has been characterized by multiple fault lines around religion, ethnicity, and class.<sup>12</sup> Following post-election violence in 2008, the Kenyan state adopted a progressive constitution with wide-ranging human rights protections, although police violence is still widespread.<sup>13</sup> There is also a growing level of violence linked to the conflict in neighboring Somalia.<sup>14</sup> The World Bank estimates that in 2015, 46 percent of the Kenyan population lived below the poverty line.<sup>15</sup> There are also high levels of inequality, with the top 10 percent of the population having 38 percent of the income.<sup>16</sup>

Articles 25, 26, and 29 of the 2011 Kenyan Constitution guarantee the right to life and the absolute prohibition of torture. However, despite the ratification of the UN Convention Against Torture (CAT), there is not currently any specific law that criminalizes torture as a specific crime or sets out reparations for torture survivors. The often brutal and indiscriminate responses by the police and security forces to crime and terror have also undermined some of the formal constitutional protections.<sup>17</sup> There are a

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12. ANGELIQUE HAUGERUD, *THE CULTURE OF POLITICS IN MODERN KENYA* 33, 38, 79–80 (1995); Gabrielle Lynch & David M. Anderson, *Democratization and Ethnic Violence in Kenya: Electoral Cycles and Shifting Identities*, in *DEMOCRATIZATION AND ETHNIC MINORITIES: CONFLICT OR COMPROMISE?* 83 (Jacques Bertrand & Oded Haklai eds., 2013).
  13. Babere Kerata Chacha, *Pastors or Bastards?: The Dynamics of Religion and Politics in the 2007 General Elections in Kenya*, in *TENSIONS AND REVERSALS IN DEMOCRATIC TRANSITIONS: THE KENYA 2007 GENERAL ELECTIONS* 101 (Karuti Kanyinga & Duncan Okello eds., 2010); *RELIGION AND POLITICS IN KENYA: ESSAYS IN HONOR OF A MEDDLESOME PRIEST* (Ben Knighton ed., 2009).
  14. David M. Anderson & Jacob McKnight, *Kenya at War: Al-Shabaab and its Enemies in Eastern Africa*, 114 *AFRICAN AFF.* 454 (2014).
  15. Kenya, *THE WORLD BANK*, available at <http://data.worldbank.org/country/kenya>.
  16. *World Bank Poverty and Inequality Statistics* (Apr. 2015), available at <http://knoema.com/WBPS2015Apr/world-bank-poverty-and-inequality-statistics-april-2015>.
  17. INDEPENDENT POLICING OVERSIGHT AUTH., *MONITORING REPORT ON OPERATION SANITIZATION EASTLEIGH PUBLICLY KNOWN AS "USALAMA WATCH"* 3 (2014), available at <http://www.regionalmms.org/images/sector/IPOA%20report%20on%20Usalama%20Watch%20operation%20in%20Eastleigh,%20Kenya.pdf>; KENYA NAT'L COMM'N ON HUMAN RIGHTS, *29 DAYS OF TERROR IN THE DELTA: KNCHR ACCOUNT INTO THE ATROCITIES AT TANA DELTA* 36 (2012), available at [http://www.knchr.org/Portals/0/Reports/29\\_Days\\_Of\\_Terror\\_Delta.pdf](http://www.knchr.org/Portals/0/Reports/29_Days_Of_Terror_Delta.pdf).

large number of organizations in Kenya involved in the documentation of torture and ill-treatment. However, the documentation of “security” related cases is widely perceived by human rights actors to be a more politically sensitive issue than the documentation of “criminal cases.”<sup>18</sup>

In contrast to the relative plurality of Kenya, the political system in Bangladesh is characterized by a two-way conflict between the governing Awami League (AL) and the main opposition Bangladesh Nationalist Party (BNP). Almost nothing escapes this bipolar conflict between the two parties who have taken turn to rule Bangladesh post-independence.<sup>19</sup> More broadly, state institutions are under-resourced, corruption is widespread, and the judiciary is largely ineffective.<sup>20</sup> Because the Bangladeshi political system is one in which the winner takes it all, opposition politics often descends into violence with strikes (called *hartals*). Like Kenya, Bangladesh is marked by widespread poverty and inequality. About 30 percent of the population lives below the poverty line.<sup>21</sup>

Bangladesh has, on paper, perhaps the toughest anti-torture laws of the three case studies. According to the Torture and Custodial Death Act of 2013, passed as a response to the ratification of CAT, police officers under suspicion of torture will be suspended from service, liable to at least five years in prison, and fined. However, due to pressure from the police, the 2013 Act is currently under review. The NGO sector—including human rights groups—is caught up in the struggle between the two political parties.<sup>22</sup> All human rights organizations are widely seen to be associated with particular political factions.<sup>23</sup>

Nepal is often described as a post-conflict, transitional society.<sup>24</sup> The Maoist insurgency from 1996 to 2006 saw widespread violence across the country. Two of the legacies of the insurgency are a large-scale international presence and a complex and active civil society. Violence has declined over

18. Interview with human rights practitioner, in Nairobi (22 Sept. 2014); Interview with human rights activist, in Nairobi (4 May 2015). All interviews are anonymous.

19. SHAHIDUL ISLAM, INSTITUTE OF GOVERNANCE STUDIES (IGS), *THE STATE OF GOVERNANCE IN BANGLADESH 2010–11: POLICY, INFLUENCE, OWNERSHIP* (2012); BANGLADESH: PROMISE AND PERFORMANCE 5, 122 (Rounaq Jahan ed., 2000).

20. ISLAM, IGS, *supra* note 19.

21. UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP) HUMAN DEVELOPMENT REPORT 2015: WORK FOR HUMAN DEVELOPMENT (2015), available at [http://hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf).

22. Interview with lawyer, in Dhaka (24 Feb. 2015); Interview with human rights activist, in Dhaka (26 Feb. 2015).

23. *Written Statement Submitted by ODHIKAR—Coalition for Human Rights, a Non-Governmental Organization in Special Consultative Status*, U.N. GAOR, Hum. Rts. Council, 27th Sess., Agenda Item 4, U.N. Doc. A/HRC/27/NGO/X (25 Aug. 2014), available at [http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2014/09/Statement-Written\\_UN-HRC\\_Odhikar\\_25-August-14\\_Eng.pdf](http://1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2014/09/Statement-Written_UN-HRC_Odhikar_25-August-14_Eng.pdf).

24. NEPAL IN TRANSITION: FROM PEOPLE’S WAR TO FRAGILE PEACE (Sebastian Von Einsiedel, David M. Malone & Suman Pradhan eds., 2012).

the past decade, but state institutions remain weak. As with the two other case studies, Nepal is marked by high levels of poverty, and is one of the poorest countries in South Asia with per capita income of \$730 USD in 2014, with 23.7 percent of the population living on less than \$1.25 USD a day.<sup>25</sup>

The Nepali Constitution of 2015 prohibits torture.<sup>26</sup> The 1996 Torture Compensation Act also sets out formal provisions for the award of civil compensation to victims of torture. Torture though is not currently a specific criminal offence. The legacy of the civil war has resulted in a large number of human rights organizations involved in the documentation of torture, primarily in relation to past and present political conflicts.

Despite the very different political, economic, and legal contexts described above, what all three countries have in common is that their human rights communities are all relatively well integrated—albeit in different ways—into the international human rights system. As such, the UN system can set financial incentives, influence individual career trajectories, and produce its own normative priorities. At one level, international treaties provide the broad parameters of much documentation work, both in terms of objectives and definitions.<sup>27</sup> At another level, domestic human rights organizations also work in collaborative relationships with human rights organizations based in the North. The leading anti-torture organizations in all three countries are all part of international networks such as the World Organisation Against Torture (OMCT), the International Rehabilitation Council for Torture Victims, (IRCT), and the International Federation for Human Rights (FIDH). Many of their publications and websites are in English rather than Nepali, Bangla, or Swahili. Above all, nearly all torture documentation work is funded by international donors.<sup>28</sup> Donors can demand measurable outcomes and outputs. The often messy work of documenting “mundane” and “everyday violence” amongst the poor, which we describe below, makes it harder to record clear outcomes.

International human rights institutions might not necessarily dominate the day-to-day work of many human rights organizations, although they do play a very significant role in setting the parameters for what is widely accepted as “successful” human rights work. In Kenya, one leading anti-torture activist described the main objective of their work as being “to make the

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25. *Nepal*, WORLD BANK, available at <http://povertydata.worldbank.org/poverty/country/NPL>.

26. Torture is also prohibited by the following laws: Government of Nepal, National Human Rights Commission Act 2012 (2068), §§ 4, 11, 12, 16(3); Government of Nepal, Evidence Act 1974 (Nepal), §§ 9(2)(A)(1), 9(2)(A)(2); Government of Nepal, National Code 1963 (Nepal), ch 8 Nos. 1, 2.

27. Interview with human rights activist, in Dhaka (25 Mar. 2015).

28. Interview with human rights activist, in Nairobi (20 Aug. 2014); Interview with human rights practitioner, in Kathmandu (1 June 2014); Interview with human rights activist, in Kathmandu (15 June 2014).

country live up to its commitments under the Convention Against Torture.”<sup>29</sup> In Nepal, a great deal of work is put in by a few human rights organizations into individual complaints to the Human Rights Committee and the Committee Against Torture, or in forming criminal cases under the principle of universal jurisdiction.<sup>30</sup> Bangladeshi human rights activists widely report that they focus their work on the “international community” as they feel they get little attention domestically.<sup>31</sup> There is, therefore, what might be called a “Geneva focus” in much human rights documentation. We use Geneva here as a short hand to signify the fact that the UN human rights system is not a free-floating universal institution, but has specific locations within the global political economy. The “Geneva focus” helps fuel the tendencies described below, and means that they are most intense when you get nearer to the heart of the UN system.

#### IV. CONCEPTUAL AND SOCIOLOGICAL PREDISPOSITIONS

In this section, we go through each of the identified predispositions in turn, setting out their genealogy within the international human rights movement, how this history has played out in the case studies we have researched, and what forms of torture and ill-treatment are, as a result, being under perceived.

##### A. Torture as an Extra-Ordinary Event

The first predisposition is a widespread focus on torture as “extraordinary.” In the public and political imagination, and particularly at the international human rights level, torture is an extreme and singularly horrific event—a matter of “enemies of the state” being held in deep government-controlled dungeons. A central objective of the international human rights movement has been to single out torture as a harm above nearly all others. In the last decade, at the level of international politics at least, the sense that torture is an extraordinary event can perhaps best be seen in the response to Abu-Ghraib. Both critics and apologists sought to portray the event as exceptional—either a disastrous abandonment of well-established principles, or the result of a “few bad apples.”<sup>32</sup> In this process, acts of torture have been given specific

29. Interview with human rights activist, in Nairobi (22 Sept. 2014).

30. Interview with human rights activist, in Kathmandu, (11 Feb. 2015); Interview with human rights activist, in Kathmandu (11 Feb. 2015). Neither Kenya nor Bangladesh has recognized the competence of the UN Human Right Committee or the Committee Against Torture to hear individual complaints.

31. Interview with lawyer, in Dhaka (24 Feb. 2015); Interview with lawyer, in Dhaka (19 Sept. 2014).

32. KELLY, *supra* note 3.

media and political prominence during the “war on terror”—as standing out amongst all the violence.

The claim torture is an extraordinary event is strongest at the international level but is present to varying degrees at the domestic level in all three case studies. It is probably most pronounced in Nepal, where there has been a tendency—albeit contested—to assume that torture is an issue connected with the armed conflict.<sup>33</sup> Much of the funding from international donors in Nepal for work on torture and ill-treatment has declined since the end of the insurgency of 1996 to 2006.<sup>34</sup> Human rights organizations are, therefore, moving into other fields such as human trafficking, juvenile justice, or gender-based violence. When Advocacy Forum-Nepal, which was one of the leading Nepali human rights groups during the insurgency, issued a report in 2014 with the title *Promising Developments, Persistent Problems*, it was criticized by one Nepali human rights organization for downplaying ongoing torture related issues.<sup>35</sup> It was claimed that much of the Nepali human rights community ignored events in southern lowland rural areas of Nepal, associating torture with events during the Maoist insurgency in upland areas.<sup>36</sup>

Similar processes are at work in Kenya and Bangladesh. The cases of torture and ill-treatment that have gained the most legal and media attention have all been linked to distinct periods of political violence. Mau Mau veterans, for example, have successfully sued the British government for torture in the 1950s.<sup>37</sup> The survivors of torture following a failed coup by army officers in the early 1980s have also been awarded damages by a Kenyan court, and had a film made about them.<sup>38</sup> Following the establishment of the Truth, Justice and Reconciliation Commission in 2008, several political activists have also been compensated for being tortured in the Nyayo House “torture chambers” of the early 1980s.<sup>39</sup>

The focus on spectacular acts of violence against political detainees stands alongside the dominant experience of many poor citizens in their interactions with the police and security forces in Kenya, Bangladesh, and Nepal. In all three case studies, violence is an ever-present threat in police-citizen interactions. As our surveys showed, harassment, extortion, threats,

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33. Project Inception Workshop, in Kathmandu (4 Sept. 2014).

34. Interview with human rights activist, in Kathmandu (7 Aug. 2014).

35. ADVOCACY FORUM-NEPAL, *PROMISING DEVELOPMENTS PERSISTENT PROBLEMS: TRENDS AND PATTERNS IN TORTURE IN NEPAL DURING 2013* (2014), available at <http://advocacyforum.org/downloads/pdf/publications/torture/promising-development-persistent-problems.pdf>.

36. Interview with human rights activist, in Kathmandu (8 Aug. 2014).

37. *UK to Compensate Kenya's Mau Mau Torture Victims*, GUARDIAN, 6 June 2013, available at <http://www.theguardian.com/world/2013/jun/06/uk-compensate-kenya-mau-mau-torture>.

38. *Tortured Air Force Officers get Sh19 Million*, STAR, 30 May 2015, available at [http://www.the-star.co.ke/news/2015/05/30/tortured-air-force-officers-get-sh19-million\\_c1144262](http://www.the-star.co.ke/news/2015/05/30/tortured-air-force-officers-get-sh19-million_c1144262).

39. *Inside the Walls of the House That Kept Kenya's Dark Secrets*, DAILY NATION, 5 May 2012, available at <http://www.nation.co.ke/News/-/1056/1400370/-/yep6qyz/-/index.html>.

and even torture, can be an everyday possibility for many people living in poverty as they encounter the law enforcement officials.<sup>40</sup>

An example from Nairobi from our qualitative follow up to the survey can illustrate the point. In the middle of the night, a group of police officers broke through the thin tin walls into Peter's home in an informal settlement. Peter was an unemployed young man just out of school who lived with his mother and father. The police were looking for some alleged thieves, as part of a general "crack down" in the area, and were acting on an apparent "tip off." This crack down had been associated with widespread acts of violence, often fatal, as well as the extraction of bribes to release detainees. The police held Peter to the floor, demanded to know his accomplices and the whereabouts of the "stolen goods." He was then hit in the face with the butt of their guns, before being taken to a nearby police station. After a few days, Peter was released without charge, but one of his eyes was severely damaged and his vision was impaired. This was not the first time that Peter had been mistreated by the police. When Peter's family tried to report the violence to another police station, his family was threatened with further violence.

Incidents such as the one described above are relatively common in all of our case studies. Our survey in Nairobi showed police were responsible for 26 percent of incidents of violence experienced by the respondents.<sup>41</sup> The survey also showed 18 percent of respondents felt that the police were the main perpetrators of violence in their area. A further survey carried out by IMLU of informal traders in Nairobi revealed that 9 percent claimed to have been beaten in the previous year by public officials, and over 50 percent knew of another trader who had been beaten in the same period.<sup>42</sup> In Bangladesh, police harassment and extortion is an everyday fact of life for many, and the police are viewed by much of the population as "predators rather than protectors."<sup>43</sup> A separate survey carried out in a western district of Bangladesh showed that police involvement was reported in 75 percent of incidents of violence.<sup>44</sup> In Nepal, acts of torture and ill-treatment also often appear to be associated with relatively mundane accusations of criminal

40. See Kelly et al., *supra* note 11.

41. Kiama et al., *supra* note 11.

42. INDEPENDENT MEDICO-LEGAL UNIT (IMLU), A CRY FOR JUSTICE: TORTURE AND ILL-TREATMENT OF HAWKERS AND SMALL SCALE TRADERS IN NAIROBI CITY COUNTY (2014), available at <http://www.imlu.org/2011-06-30-23-44-4/2015-08-28-09-08-23/reports/finish/2-reports/279-torture-and-ill-treatment-of-hawkers-and-small-scale-traders-in-nairobi-city-county/0.html>.

43. Interview with human rights activist, in Dhaka (19 Mar. 2015); Interview with journalist, in Dhaka (22 Feb. 2015); Interview with lawyer, in Dhaka (24 Feb. 2015); Interview with human rights activist, in Dhaka (24 Mar. 2015); Interview with journalist, in Dhaka (18 Sept. 2014).

44. Shr-Jie Wang, Jens Modvig & Edith Montgomery, *Household Exposure to Violence and Human Rights Violations in Western Bangladesh (I): Prevalence, Risk Factors and Consequences*, 9 BMC INT'L HEALTH HUM RTS. 29 (2009).



activities, and the police are perceived as the main source of violence. In our survey, the police were involved as perpetrators in nearly 55 percent of all reported violent incidents.<sup>45</sup> An Advocacy Forum detention monitoring report shows that torture is a more common phenomenon among detainees from *dalit*, underprivileged, and ethnic minority groups.<sup>46</sup>

None of the above is to argue that human rights organizations only document forms of torture and ill-treatment that are spectacular. In their day-to-day work, domestic human rights organizations regularly come across such mundane acts of violence. And, there are intense debates within many human rights organizations on the potential and limitations of shifting understandings of torture away from the focus on the spectacular. Rather, it is to say that as human rights organizations assess which cases to take forward, which ones to issue international appeals over, and which ones to bring to the UN, the organizations make their judgments on the basis of assumptions about which cases are relatively more likely to get attention. It is here that integration into the international human rights movement has greatest implications, as the focus on torture as exceptional is most acute the closer to “Geneva.” As Alain Badiou has argued, when harms are placed on a pedestal, they can become very hard to recognize in concrete events.<sup>47</sup> If torture is seen as unique and exceptional, there is a danger that many of the unfortunately everyday forms of torture experienced by people living in poverty will be missed.

## B. Infrastructures of Documentation

The second set of predispositions is a product of what might be called the “infrastructure of documentation.” These are the institutional and social arrangements through which human rights groups identify survivors of torture and ill-treatment. These infrastructural predispositions are spatial and social, serving to act as partial barriers between human rights organizations and poor populations.

The physical location of human rights offices is the first crucial factor in the infrastructure of documentation.<sup>48</sup> Human rights organizations almost uniformly have their offices in middle and upper class areas of the capital city. Only in Nepal has it been routine for human rights organizations to operate

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45. Kelly et al., *supra* note 11.

46. ADVOCACY FORUM-NEPAL, NEPAL: IS THE GOVERNMENT UNABLE OR UNWILLING TO PREVENT AND INVESTIGATE TORTURE? 33 (2013), available at <http://advocacyforum.org/downloads/pdf/publications/torture/26-June-2013-english-version.pdf>.

47. ALAIN BADIOU, ETHICS: AN ESSAY ON THE UNDERSTANDING OF EVIL 62–63 (Peter Hallward trans., 2001).

48. See ANDREW M. JEFFERSON & LIV S. GABORIT, HUMAN RIGHTS IN PRISONS: COMPARING INSTITUTIONAL ENCOUNTERS IN KOSOVO, SIERRA LEONE, AND THE PHILIPPINES (2015).

district offices away from major cities. These offices though are shrinking in number due to lack of funds. Of all the organizations interviewed, only two had permanent offices near or in low-income neighborhoods. Human rights organizations can, therefore, be very distant from the poorer areas where many human rights abuses take place.

The second linked factor is the social networks within which human rights information is gathered. Human rights work takes place within the context of formal and informal social networks that link human rights actors, the media, and other professionals. These networks though are inevitably restricted. The leadership of human rights organizations in all three countries overwhelmingly comes from the middle classes.<sup>49</sup> As people become more important in human rights organizations, their contacts with people living in poverty are more likely to be fleeting and formally structured. Furthermore, and probably more importantly, if human rights organizations lack the resources to have a direct presence on the ground in poor areas, they have to rely on other sources in order to identify victims.<sup>50</sup> Many human rights organizations have unpaid “networks” of monitors. These people will usually be trained—commonly through internationally funded workshops, but can work in an informal manner so as not to attract too much attention. However as one Kenyan human rights activist put it, “it is not entirely clear when we say we have a network, what we mean by that, who is in it and how strong those relationships are.”<sup>51</sup> In Bangladesh, almost all information gathered on human rights abuses comes through the press—and journalists are often key members of human rights networks.<sup>52</sup> This comes with all the attendant biases about what makes an “interesting case.”<sup>53</sup> The same can be said about Kenya and Nepal—although perhaps to a less extent—where organizations employ local journalists as monitors, and also trawl through the media in search of cases.<sup>54</sup> Simultaneously, human rights activists also rely on the media as a key lobbying method. For better or for worse, human rights organizations, therefore, rely on the priorities of the media both in documentation and disseminating information about torture and ill-treatment.<sup>55</sup>

The distance between human rights organizations and informal settlements goes both ways. It can be very expensive and time consuming for

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49. Interview with human rights practitioner, in Nairobi (31 July 2014).

50. Interview with human rights practitioner, in Kathmandu (13 Feb. 2015).

51. Interview with human rights practitioner, in Nairobi (7 May 2015).

52. Interview with human rights practitioner, in Dhaka (25 Mar. 2015); Interview with human rights practitioner, in Dhaka (9 Sept. 2014).

53. Interview with journalist, in Dhaka (22 Feb. 2015).

54. Interview with human rights practitioners, in Kathmandu (13 Feb. 2015, 1 June 2014, 13 June 2014, 17 Nov. 2014).

55. Interview with human rights practitioner, in Dhaka (9 Sept. 2014); Interview with human rights practitioner, in Kathmandu (23 Feb. 2015); Interview with human rights practitioner, in Kathmandu (1 June 2014); Interview with human rights practitioner, in Kathmandu (15 June 2014).



a resident of a slum to travel across the city to a human rights office. For a vulnerable and fearful survivor, the journey can be alienating. Practical awareness of human rights organizations can also be very low amongst residents of informal settlements. In Kathmandu only 14 percent of respondents to our survey said they would an incident of torture or ill-treatment report to NGOs.<sup>56</sup> Similarly, in our Kenya survey, only 4.6 percent of respondents said they would report incidents of torture and ill-treatment to NGOs.<sup>57</sup>

It is often said that it is a long way from Geneva to Kenya, Bangladesh, or Nepal. As such, much recent academic work has focused on the processes of translation between international and national human rights organizations.<sup>58</sup> However, there are relatively good infrastructures in place to connect leading domestic human rights NGOs with the international human rights movement. In contrast, the links between high profile domestic NGOs and poorer neighborhoods can often be relatively weaker. The spatial, social, and cultural distance between the documenting organizations, and low-income areas, inhibits the documentation of torture and ill-treatment as an everyday form of violence against people living in poverty.

### C. From the “Dungeons” to the “Street”

Our third predisposition is a focus on places of detention. Detention monitoring has played a central role in the international movement against torture. One of the most significant achievements of the international human rights movement in the last decade has been the increasing ratification of the Optional Protocol to the Convention Against Torture, establishing international and domestic monitoring mechanisms for places of deprivation of liberty. Places of detention are prioritized because it is widely acknowledged that torture and ill-treatment is often linked to interrogation and punishment.

Of the three case studies researched here, detention monitoring has the greatest relative presence in Nepal. Advocacy Forum, one of the largest and longest established human rights organizations in Nepal, has a long history of visits to places of detention.<sup>59</sup> The statistics collected for the INSEC year-book—perhaps the longest running human rights publication in the country—also only include torture if it takes place in detention.<sup>60</sup> Furthermore, the 1996 Nepali Torture Compensation Act defines torture as taking place

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56. Sharma, Sijapati, Baniya, Bhandari, Pathak, Bhattarai, Jensen, Kelly, *A Comparative Analysis of the Documentation of Torture and Ill-Treatment in Low-Income Countries*, *supra* note 11.

57. Kiama et al., *supra* note 11.

58. MERRY, *supra* note 1; STEFFEN JENSEN & ANDREW JEFFERSON, *STATE VIOLENCE AND HUMAN RIGHTS: STATE OFFICIALS IN THE SOUTH* (2009).

59. Interview with human rights practitioner, in Kathmandu (11 Feb. 2015).

60. Interview with human rights practitioner, in Kathmandu (17 Nov. 2015).

"in detention in the course of investigation, inquiry or trial."<sup>61</sup> In Bangladesh and Kenya there is relatively less practical focus on detention monitoring partly because human rights groups have greater difficulty in gaining access. However, there can still be a formal legal orientation towards only seeing torture taking place in places of detention. In Bangladesh, the Torture and Custodial Death Act prioritizes custody as the central location for torture.

There is no doubt that places of detention are key sites for torture and ill-treatment. The poor are also often disproportionately represented amongst detained populations. However, there are still consequences in paying relatively less attention to the forms of torture and ill-treatment that take place elsewhere. Being taken to a place of detention is sometimes of a relative privilege.

A case from Bangladesh provides an example. Limon was a 16-years-old student preparing for his upcoming final exams. Limon's father was a day laborer, and his mother was a housemaid. While Limon was standing outside his home, some men from the Rapid Action Battalion (RAB) appeared on motorbikes. The RAB is an elite anti-crime and anti-terror unit of the Bangladesh Police, and is widely accused of human rights abuses.<sup>62</sup> One of the men on motorbikes was in plain clothes, and the others were in black uniforms. The man in plainclothes grabbed Limon, pointed a pistol at his head, and demanded to know the whereabouts of a wanted criminal. Limon protested that he knew nothing, but was shot just above the knee. The RAB detained and charged Limon with possession of illegal arms and obstructing law enforcement. He was exonerated of these charges forty-two months after being shot.

According to the surveys that we carried out in Dhaka, Kathmandu, and Nairobi, the residents of informal settlements commonly experience violations at the hand of state officials in their neighborhoods and in their houses. In Kenya in particular, even if people were taken to police stations, they were often not formally detained, but beaten and extorted "off the book." Similarly, in our Nepal survey, respondents reported that less than 5 percent of the identified acts of torture and ill-treatment had taken place in a place of detention.<sup>63</sup> The qualitative case studies in our Dhaka survey showed that victims are often not detained, but beaten up in public or in their homes.<sup>64</sup> Another survey, carried out by the human rights organization Dignity in Bangladesh, showed that 46 percent of incidents of torture and ill-treatment took place in the victim's home.<sup>65</sup>

61. Compensation Relating to Torture Act, 2053 (1996), available at <http://www.lawcommission.gov.np/en/documents/2015/08/compensation-relating-to-torture-act-2053-1996.pdf>.

62. HUMAN RIGHTS WATCH, WORLD REPORT 2015: BANGLADESH (2015), available at <https://www.hrw.org/world-report/2015/country-chapters/bangladesh>.

63. Kelly et al., *supra* note 11.

64. Choudhoury et al., *supra* note 11.

65. Wang et al., *supra* note 44.

None of the above is to say that places of detention should not remain a key place where human rights organizations look for torture and ill-treatment. Rather, we argue that there is an urgent need to look elsewhere as well. In all three case studies there is a significant amount of torture and ill-treatment that appears to take place outside places of detention. Poor people can be particularly vulnerable to such violence. We might say that we need to leave the dungeons for a while and get into the streets.

#### D. PRIORITIZING LEGAL ACCOUNTABILITY

The penultimate predisposition can be seen as a prioritization of legal forms of accountability. The goals of criminal prosecution and reparations often dominate human rights documentation. The assumption is not only that such process are crucial in terms of individual cases, but they can also serve to reduce future acts of torture through ending cultures of impunity. CAT requires that all acts of torture are “punishable by appropriate penalties.” The Convention also requires states ensure that a “victim of an act of torture obtains redress.”<sup>66</sup> In addition, the UN Committee Against Torture and the UN Human Rights Committee allow individual complaints against violations of the prohibition of torture, and ill-treatment. Nepal, but not Bangladesh or Kenya, has accepted the Committees’ competence to examine individual complaints. In this context, much time and effort is invested in training, networks and lobbying in order to further the aim of holding perpetrators to account and providing compensation for survivors.

In Bangladesh, Nepal, and Kenya, human rights groups have been lobbying for specific legislation to ensure legal accountability for torture. In Bangladesh, custodial torture became a specific crime in 2013. In Nepal, the 1996 Torture Compensation Act provides compensation for victims of torture. In Kenya, human rights groups are lobbying for specific legislation around the criminalization of torture.<sup>67</sup> The results of the formal legal provisions that have been passed have been varied. In Nepal, the Torture Compensation Act structures much of the documenting work of human rights organizations around torture.<sup>68</sup> In contrast, Bangladesh, the requirement to suspend a police officer during the investigation of an allegation of torture has had the perverse effect that police officers threaten survivors to pressure them to withdraw their complaints.<sup>69</sup>

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66. CAT, *supra* note 10, arts. 4, 14.

67. Interview with human rights practitioner, in Nairobi (18 Aug. 2014).

68. Interview with human rights practitioner, in Kathmandu (2 Sept. 2014).

69. Interview with lawyer, in Dhaka (19 Sept. 2014).

The emphasis on legal accountability has several implications for the forms of torture and ill-treatment that are documented by human rights organizations. First, it implicitly prioritizes forms of torture that can be documented to the required level of legal proof. It can also require that medicolegal reports are available. However in all three countries, medicolegal reports are often difficult to obtain.<sup>70</sup> Second, there is a risk that those survivors who do not privilege prosecutions or reparations will be left to one side. Indeed, prosecution and reparation is seldom the initial practical priority for many survivors. Instead, for many of the poorest, the principal concern is often one of protection.<sup>71</sup>

Let us give an example from Nepal. Bikash was a young man who worked as a driver for a district judge. For reasons that are not entirely clear he was severely beaten by the Nepal Army. A local human rights worker from INSEC heard about the case and informed Advocacy Forum in Kathmandu. Advocacy Forum then met with Bikash and obtained medical evidence, suggesting that he file a case under the Torture Compensation Act. It soon became clear the young man was under pressure from within the court—which was also his employer—not to take the case forward. Bikash feared that he would lose his job, and the case was eventually withdrawn.

This is not to say that survivors would not like criminal prosecutions or compensation, but rather that they seem to think it is practically unlikely. In our Nepal survey, 93 percent of respondents said they “would report a violent incident”; 35 percent said they would do so for compensation, and 69 percent for legal action against the perpetrators.<sup>72</sup> However, there is a clear discrepancy between what people say they will do and what they actually do. Less than 5 percent of the identified victims of torture and ill-treatment in the Nepal survey actually reported the incident to the police. Similarly, in our Kenya survey, only 30 percent of respondents said they would report incidents of torture and ill-treatment to the police.<sup>73</sup> Of those who had actually experienced incidents of violence, only 13 percent had reported the incidents to NGOs or paralegals. Only 25 percent of the respondents reporting incidents of violence to the police felt that “justice was served.”

In all three case studies, survivors living in informal settlements widely feel that in practical terms, seeking legal redress is futile because nothing is likely to come of it.<sup>74</sup> The time and expense involved in court cases can be

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70. Tobias Kelly, Steffen Jensen, Morten Koch Andersen, Jeevan Raj Sharma & Catrine Christiansen, *A Comparative Study of the Use of the Istanbul Protocol Amongst Civil Society Organizations in Low-Income Countries*, 26 TORTURE: J. REHAB. TORTURE VICTIMS & PREVENTION TORTURE 60 (2016).

71. Interview with human rights practitioner, in Kathmandu (13 Feb. 2015); Interview with human rights practitioner, in Nairobi (5 May 2015).

72. Kelly et al., *supra* note 11.

73. Kiama et al., *supra* note 11.

74. Interview with human rights practitioner, in Dhaka (24 Mar. 2015).

too much.<sup>75</sup> In Bangladesh there has been only one prosecution of a police officer under the 2013 Act.<sup>76</sup> In this context, survivors are often scared, fearing that their life might be jeopardized if they dared to report police violence.<sup>77</sup> Levels of intimidation can be very high, and witness protection programs are virtually non-existent.<sup>78</sup> Survivors and family members can, therefore, prioritize simply coming home alive, over legal forms of accountability.<sup>79</sup> In Bangladesh in particular, detained survivors will often only go to court in order to get bail, rather than accountability.<sup>80</sup> Human rights activists widely lament the inability or unwillingness of many survivors to stick with a case for the length of time demanded by the courts. Indeed, some organizations in Nepal have made survivors sign statements saying that they will not abandon the case as a condition of taking it forward.

The point here is not to dispute that prosecution and reparations are important. However at the same time, there is a danger of leaving to one side those victims who are not willing or able to become the focus of criminal investigations and litigation. The logic behind human rights documentation is that impunity and state violence can only be fought through shining a light into dark places. More knowledge here is seen as an inherently good thing. The more people who know about incidents of torture, and ill-treatment the less likely it is to happen again. However for some survivors of state violence, the desire is often the opposite—that is, to turn the light off and to recede back into obscurity. Victims who live in poverty are relatively more likely to recede back into obscurity than survivors with relatively greater political and social connections. Human rights documentation can, therefore, miss much of the torture and ill-treatment experienced by the poor.

### E. The “Good” Victim

The final predisposition is the result of what can be called “good victimhood.” The international human rights movement has tended to valorize torture survivors as particularly heroic—often with good reason. Within this

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75. Interview with human rights practitioner, in Dhaka (25 Mar. 2015); Interview with human rights practitioner, in Kathmandu (11 June 2014).

76. Interview with journalist, in Dhaka (22 Feb. 2015); Interview with human rights practitioner, in Dhaka (3 Mar. 2015); Interview with human rights practitioner, in Dhaka (24 Mar. 2015).

77. Interview with journalist, in Dhaka (22 Feb. 2015); Interview with journalist, in Dhaka, (23 Feb. 2015); Interview with journalist, in Dhaka (18 Sept. 2015).

78. Interview with human rights practitioner, in Nairobi (6 May 2015).

79. Interview with journalist, in Dhaka (22 Feb. 2015); Interview with lawyer, in Dhaka (24 Feb. 2015); Interview with human rights practitioner, in Dhaka (24 Mar. 2015); Interview with human rights practitioner, in Nairobi (7 May 2015).

80. Interview with human rights practitioner, in Dhaka (25 Mar. 2015); Interview with human rights practitioner, in Dhaka (11 Sept. 2014).

moral system, the political activist in a dictatorial regime assumes a privileged position.<sup>81</sup> Elsewhere we have described such processes as being part of particular “histories of victimhood,” in which the claimed attributes of a victim are not only a reflection of suffering, but also the product of specific political contestations over moral deservedness.<sup>82</sup> Some types of torture survivor are easier, both morally and practically, to acknowledge as such.

In Kenya, Hassan Guyo was a Kenyan human rights activist, working on refugees and human trafficking issues in the north of the country.<sup>83</sup> In 2013, Guyo was shot in the back at a checkpoint by members of a military unit. He had been arrested several times prior to his fatal encounter and had kept records of his maltreatment by the Kenyan security forces. The Kenyan state or Kenyan human rights organizations, however, had not made any significant action to try and provide him protection. Following his death though, after intense media coverage, the military was forced to conduct an inquest, which showed that Guyo had been shot by a military issued bullet. A group of human rights NGOs provided evidence to the coroner, alleging that Guyo had been extra-judicially killed. The case ended in half-defeat, as the court could not determine which particular soldier had fired the shot that killed Guyo so the criminal charges were dropped. However the court did rule Guyo had been killed by the military. On the back of this verdict the family launched a still ongoing civil law suit for compensation.

Although the Kenyan legal system failed to launch a prosecution—at testing to the difficulty in providing the required forms of legal evidence—in human rights terms, Hassan Guyo was a “perfect victim.” He had previously been tortured a number of times without his case being brought up by human rights organizations. People are also shot everyday by the police in Kenya. However, Guyo’s death elicited a particular media, human rights, and state response. Why might this be? First, on a somber note, our material indicates—in Kenya and beyond—that human rights cases can be easier to pursue once the victim is dead.<sup>84</sup> As we have argued above, living survivors are often too scared to seek redress. In contrast, the dead cannot run away. Guyo’s recognition was also enabled by his status as a human rights defender, helping to mobilize human rights interests and the press. Institutionally, the acknowledgment of Guyo as a victim was further enabled by the existence of legal and political procedures for recognition—forensic reports, a mag-

81. DIDIER FASSIN & RICHARD RECHTMAN, *THE EMPIRE OF TRAUMA: AN INQUIRY INTO THE CONDITION OF VICTIMHOOD* (2009); KELLY, *supra* note 3.

82. *HISTORIES OF VICTIMHOOD* (Steffen Jensen & Henrik Ronsbo eds., 2014).

83. Based on interviews with Kenya Human Rights Commission (KHRC), Kenyan National Human Rights Commission (KNHRC), and IMLU, see *supra* note 42, as well as *Joint Press Statement on the Killing of Hassan Guyo, a Human Rights Defender* (19 Aug. 2013) available at <http://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/401-joint-cso-statement-on-the-killing-of-guyo-a-human-rights-defender.html>.

84. Interview with human rights practitioner, in Dhaka (11 Sept. 2014).

istrate's court, a human rights community, interested journalists—which as we have argued above, are not equally distributed.

In contrast to cases such as Guyo's, people living in poverty can find it harder to present themselves as "good victims." In one of the informal settlements in which we worked in Kenya, there is a wall with the heading "Our Fallen Soldiers," with at least twenty names written below. All these young men had been beaten and killed by the security forces. Many of them were allegedly involved in criminal groups. None of the cases appear to have been taken up by human rights groups. None of the cases appear to have become the subject of international alerts and media campaigns. Poverty can push people into moral compromises. The result is that the distinction between victim and perpetrator is seldom clear-cut. People living in poverty can also be vulnerable to accusations of criminality, irrespective of their relative guilt. In this context, socially recognized heroism is a privilege that can be very difficult for the poor to obtain.

Our point is not that human rights organizations do not know about such "imperfect victims." Nor is it that they do not document their cases. Rather, our argument is that documenting the often complex lives of people living in poverty is more difficult than documenting the lives and deaths of largely middle class human rights defenders. To the extent that the logic of human rights documentation is to shine light into places of darkness and evoke shame on the part of the state, some victims seem to invoke shame more easily than others.

## V. CONCLUSION

This article has argued that human rights documentation techniques systematically under perceive the extent of torture and ill-treatment among the poor. Limitations in social and geographical reach, a concentration on places of detention, the sidelining of protection issues, a search for seemingly innocent survivors, and treating torture as an "extraordinary" event can all mean that the experiences of the poor are missed. Importantly, many of the arguments presented here could also apply to wider human rights violations. The relatively limited reach of human rights networks, the emphasis on accountability, and the focus on "good victims," can all create obstacles in responding to the needs of poor populations across a range of issues.

It may well be that human rights organizations—both local and international—are relatively content to work within the predispositions we have outlined. They cannot cover everything and everywhere, and there are perfectly good reasons to focus on places of detention, on "virtuous victims," and on legal accountability. Expanding torture away from "extra-ordinary" events and places of detention has important resource implications, as well



as potentially risking diluting the ethical and political weight associated with a claim of torture. However, it is also important to recognize that such predispositions will mean that the incidence of torture and ill-treatment amongst populations living in poverty will remain significantly under perceived.

It may well also be that many people living in poverty are relatively unconcerned with human rights documentation. Our arguments certainly suggest that there is an awkward relationship between the justice concerns of human rights organizations and many of the poorest members of society. It is not just that poor people are hard to document, but rather, they do not always see it as helpful. Sometimes—due to fear and lack of confidence in the justice system—they can want to disappear from view, rather than have the light of documentation shone upon them. It is, therefore, important to recognize the inherent limits of documentation and acknowledge that the answer might not always be more documentation. There is a need to move from a top down “supply” model, to a bottom up “demand” approach. This means shifting further from a situation where documentation is seen as primarily serving agendas set by the international human rights movement, towards a situation where documentation responds to the needs and aspirations of populations living in poverty.

To end, let us return to Chambers’ argument, with which we started.<sup>85</sup> His claim that the extent and nature of poverty was largely unperceived by development practitioners was highly influential in increased attempts to incorporate the knowledge and opinions of people living in poverty in development projects. However, alongside its many successes, this approach has also been criticized for glossing over the inequalities in the encounter between practitioners and people living in poverty, and for failing to provide a model of structural change.<sup>86</sup> It is important that human rights organizations heed the lessons learned from development practice. “Demand” focused documentation is certainly no universal panacea.

With these caveats in mind, there are three main linked practical implications of this research in terms of the ways in which documentation is carried out. The first can be summed up as: getting to Geneva is not always the best thing. The UN human rights system provides an indispensable framework within which states can be held to account. However, the UN human rights system rules and procedures inevitably mean that there is an attempt to apply a near universal template to torture documentation that can often be, at best, an awkward fit to local conditions, and at worst, irrelevant. This is not a cultural relativist point in any way, but simply that attempts

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85. Chambers, *supra* note 4.

86. Paul Richards, *Participatory Rural Appraisal: A Quick-and-Dirty Critique*, 24 PLA NOTES 13 (1995), available at <http://pubs.iied.org/pdfs/G01591.pdf>; Andrea Cornwall & Garrett Pratt, *The Use and Abuse of Participatory Rural Appraisal: Reflections from Practice*, 28 AGRICULTURE & HUM. VALUES 263 (2010).



at standardization can be exclusionary. If we start on the streets of Dhaka, Kathmandu, or Nairobi, the specific importance of human rights can look very different. Forms of accountability and reparation, as well as types of evidence that make perfect sense on the shores of Lake Geneva, can be far down on the list of priorities for those living in poverty.

The second implication is that protection is central to human rights work, including documentation. Without feeling secure and safe, poor populations will have little confidence in human rights reporting. While the protection of human rights defenders has rightly been a priority for the human rights movement, the protection of victims of human rights violations has largely been taken for granted as assumed under wider forms of human rights work.<sup>87</sup> The protection of victims of human rights violations needs to be tackled head on. There are important challenges in doing so, in that the organization that has the legal obligation to protect survivors and prevent reprisals is also the body that has carried out the acts of torture and ill-treatment. Without protection, though accountability is not a practical option for people who otherwise lack the social and political connections to defend themselves.

The third implication is linked to the previous two. In order to respond to the forms of torture, and ill-treatment experienced by people living in poverty, human rights groups need to make better connections with grass roots organizations that already work with impoverished populations. All too often, the head offices and social worlds of human rights organizations are far away from the lives of populations living in poverty. The gap between a slum and an NGO office can be hard to bridge. However, there are large numbers of organizations that do have solid roots amongst such groups. They will, more often than not, be organizations that never utter the words "human rights," but they can be interested in extending human rights protections. Such groups can include women's groups, youth clubs, churches, and health organizations. Examples of such relationships in Kenya, Nepal, and Bangladesh, include mobile health clinics, close ties with informal trader's associations, and community justice centers.<sup>88</sup> Not only do these organizations often have a good sense of what day to day life is like, but people living in poverty are more likely to trust these organizations. Such organizations are, therefore, well placed to identify victims and to provide necessary support (medical assistance, shelter, local champions against perpetrators, etc.) and hopefully contribute to offer them protection. Sometimes human rights groups are not the best people to do all human rights work.

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87. For an exception see REDRESS, ENDING THREATS AND REPRISALS AGAINST VICTIMS OF TORTURE AND RELATED INTERNATIONAL CRIMES: A CALL TO ACTION, available at <http://www.redress.org/downloads/publications/Victim%20Protection%20Report%20Final%2010%20Dec%2009.pdf>.

88. Interview with human rights practitioner, in Dhaka (3 Mar. 2015); Interview with human rights practitioner, Kathmandu (19 Feb. 2015), Interview with human rights practitioner, in Nairobi (5 May 2015).